
Higher Education Committee

HB 1586

Brief Description: Permitting a college or university to maintain a diverse student population by considering race, color, ethnicity, or national origin in the admission and transfer process without using quotas, predetermined points, or set asides.

Sponsors: Representatives Kenney, Santos, Hasegawa, Cody, McDermott, Conway, Ormsby, Roberts, Sells, Hunt, Upthegrove, Williams, Darneille, Chase, McCoy, Moeller, Lantz, Hudgins and McIntire.

Brief Summary of Bill

- Authorizes public institutions of higher education to consider race, color, ethnicity, or national origin in admissions and transfer policies for the purpose of promoting diversity on their campuses.

Hearing Date: 2/10/05

Staff: Sydney Forrester (786-7120).

Background:

State Law

In 1997, Initiative 200 was filed as an initiative to the Legislature. Petitions in support were filed in sufficient number to qualify the measure for certification to the 1998 Legislature. The Legislature took no action on the measure, and it became a ballot measure in the 1998 general election. After voter approval, the initiative became effective in early December 1998, and is codified at RCW 49.60.400.

The state is prohibited from discriminating or granting preferential treatment to an individual or a group, based on race, sex, color, ethnicity, or national origin in public employment, public education, and public contracting. This prohibition, however, does not affect otherwise lawful classifications necessary for privacy, medical or psychological treatment, undercover law enforcement, or film, video, or audio casting. In addition, there is no prohibition against providing separate athletic teams based on sex, or against actions necessary to establish or maintain eligibility for federal funding.

U. S. Supreme Court (Court) Decisions

During its 2003 term, the Court decided two cases addressing higher education admissions policies in which race was used as a factor. The Court had not addressed the use of race in public

higher education since the 1978 *Bakke* case which reviewed a medical school's racial set-aside admissions policy and produced six separate opinions but no majority opinion.

Grutter v. Bollinger, 123 S. Ct. 2325 (2003)

A law school applicant sued the University of Michigan claiming race discrimination in the university's law school admissions policy. A majority of the Court held the law school's use of race in its admissions policy was narrowly tailored, furthered a compelling state interest in obtaining the benefits that flow from a diverse student body, and was not prohibited by the Equal Protection Clause of the U. S. Constitution.

The Court explained the concept of narrowly tailoring in raced-based admissions policies as:

- being flexible enough to provide individualized consideration of each applicant;
- including serious, good faith consideration of race-neutral alternatives to achieving the diversity sought;
- being limited in time, either through sunset provisions or through periodic reviews to determine whether racial preferences still are necessary;
- not using a quota system;
- not insulating a category of applicants or an individual applicant from comparison with all other applicants; and
- not making race a defining feature of an individual's application.

Gratz v. Bollinger, 123 S. Ct. 2411 (2003)

A class-action suit was filed against the University of Michigan claiming its undergraduate admissions policy constituted racial discrimination. The Court's majority opinion held that the university's undergraduate admissions policy was not narrowly tailored to achieve the university's interest in diversity and violated the Equal Protection Clause of the U. S. Constitution.

Summary of Bill:

Institutions of higher education are authorized to implement admissions and transfer policies under which race, color, ethnicity, or national origin may be considered. Any such policy must meet minimum requirements, and all qualified applicants must be considered individually for their qualities and experiences that may contribute to diversity of the student body. No admissions slots may be set aside based on race, color, ethnicity, or national origin; no applicant may be given separate consideration based solely on these factors; and no predetermined value or weight may be assigned to these factors.

An admissions or transfer policy under which race, color, ethnicity, or national origin is considered also must include criteria for evaluating whether consideration of these factors continues to be necessary to promote diversity on campus. There must be an established process for periodic review of the policy, and an institution adopting such a policy must periodically explore race-neutral alternatives to achieve the diversity the institution is seeking.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.